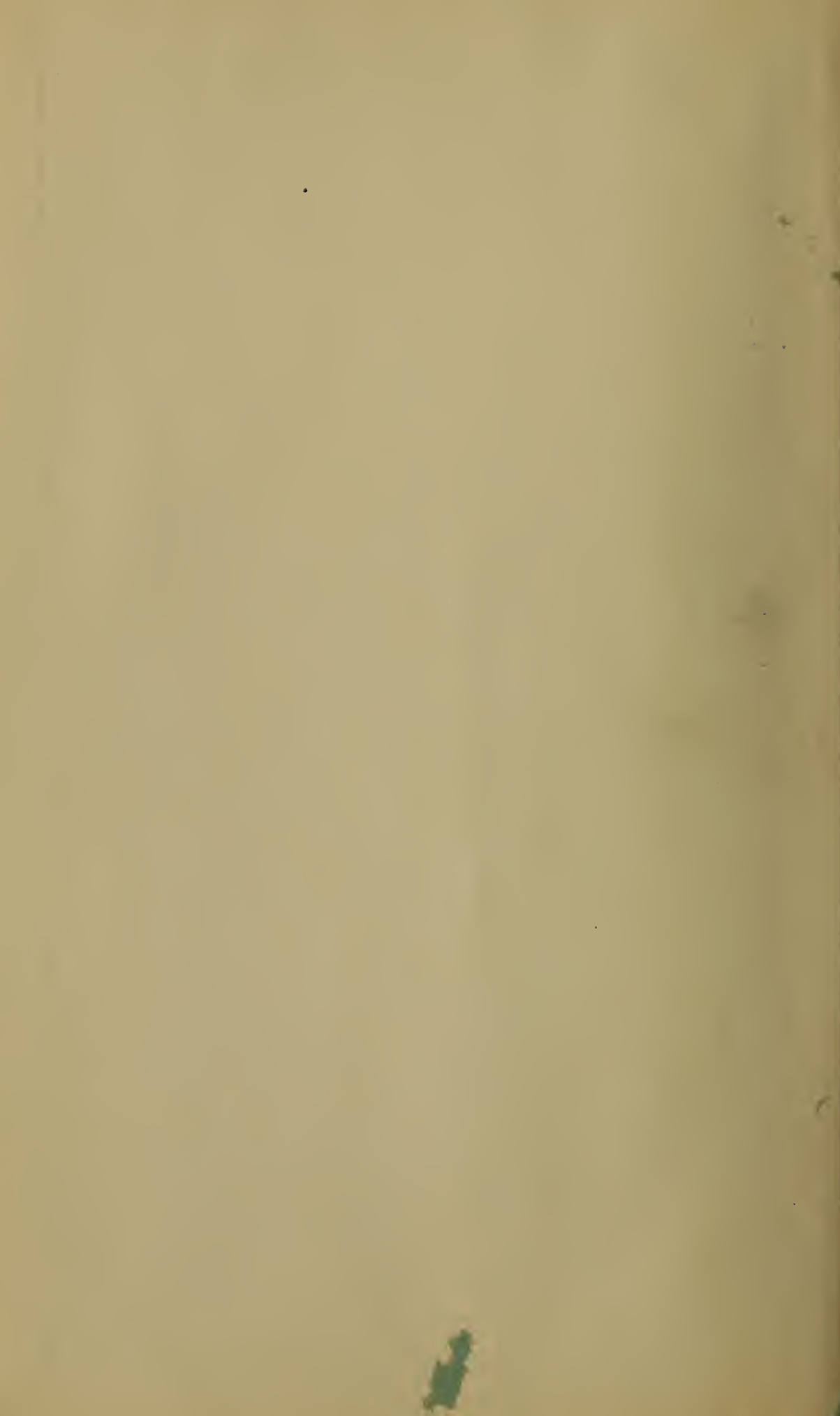


HD

226

M25B66





Botts (L. J.)
"



Printed for title

REVIEW

OF THE

Report of the Judiciary Committee

OF THE

HOUSE OF REPRESENTATIVES,

Recommending the Passage of Bill No. 65, for the Relief of
William McGarrahan, reported May 8, 1868.

McGILL & WINTERROW, Printers & Stereotypers, Washington, D.C.

H II 226
M25 B66

cont. Apr 8, 1874.

REVIEW

OF THE

REPORT OF THE JUDICIARY COMMITTEE

OF THE

HOUSE OF REPRESENTATIVES,

Recommending the Passage of Bill No. 65, for the Relief of William McGarrahan, reported May 8, 1868.

The report begins as follows:

"The history of this case is composed of such a multitude of circumstances, spread over a period extending from the year 1844 to the present time, that to give it in detail would be to present a report so voluminous as to defeat the very object contemplated by the House in submitting it to the committee, that of information to its members.

"It has, therefore, been deemed advisable to exhibit leading and controlling facts rather than minute and unimportant particulars."

This report, then, does not purport to give all the facts of the case; it pretends only to give what the committee esteem "leading and controlling facts."

If it was the object of the committee to pick out those circumstances best calculated to display the treachery and fraud which have distinguished this case from its inception to the present moment, they have been very unfortunate in their selection. The true character of the "relief" sought by Mr. McGarrahan can be much better understood by a briefer narration of the facts than that furnished by the committee. For the correctness of the recital about to be made, we appeal to the opinions delivered by the Supreme Court of the United States in the case of *The United States vs. Gomez*, reported in 23 Howard, 1 Wallace, and 3 Wallace.

On the 9th of February, 1853, one Vicente Gomez, who had been a clerk in the departmental government of Monterey,

under the Mexican rule, by Pacificus Ord, his attorney-at-law, presented to the board of land commissioners, under the act of March, 3, 1851, entitled 'An act to ascertain and settle the private land claims in the State of California,' a petition praying the confirmation of his claim to a tract of land called 'Panoche Grande,' of the extent of four square leagues, and alleged as the foundation of the claim that the tract was granted to him in the year 1844, by Governor Manuel Micheltonena. He filed no documentary evidence of his title, claiming that the title papers were lost about the time the military and naval forces of the United States took possession of Monterey. He attempted by parol proof, before the commissioners, to show their existence, loss, and contents. He claimed in his petition four square leagues of land. The only document introduced in support of it, purported to be his petition to the Governor, and this document represented the original claimant as having asked for but three leagues. There was no concession or grant, nor was there any evidence that any title of any kind was ever issued by the Governor to the claimant. He stated in his petition that he had obtained the map in the record from the proper officers of the department, but the alleged fact was not satisfactorily proved. Four witnesses were examined by the claimant before the land commissioners, but only one of the number pretended that he had ever seen the grant, and his statements were rejected by the commissioners as indefinite and unsatisfactory, for sufficient reasons. He never proved possession under the grant; and, on the contrary, it was shown that he had never occupied it at all, and never even saw the premises during the Mexican rule.

This man Gomez was one of the witnesses in the celebrated Limantour case. The judge of the United States district court for the northern district of California, in delivering his opinion in that case, reviewed the testimony of this Gomez, his antecedents, and the evidence touching his character for truth and veracity. The result was, that the testimony of Gomez was rejected as utterly worthless. José Abrego was the witness who testified before the board to the fact of having seen this grant to Gomez. Abrego was also an important witness in the

Limantour case; he, too, was declared by the district judge to have been guilty of perjury. (See report of this case, 1 Hoffman, 390-6, 7, 8, 420, 426, 428.) We refer to this exposition of the characters of these two individuals, because much stress is laid by the committee on the fact that the board found that Gomez had given satisfactory proof of the existence and loss of the grant. Now, this finding, resting upon the statement of Gomez and the testimony of Abrego, imports nothing, in view of the subsequent light thrown upon the characters of these two individuals.

At most, the board only expressed the opinion that Gomez had received and lost a grant. But Gomez had something else to do besides showing that he had received a Mexican grant; it was necessary to show where it was located, and what were its precise boundaries. This the willing Abrego could hardly be expected to recollect, and to supply this difficulty Gomez trumped up a most improbable story, and one that has no other basis for its support but his own blasted reputation for veracity.

Gomez was a clerk in the office of the Mexican commissary at Monterey. He stated that he deposited his grant in a pigeon-hole in the commissary's desk, and that when the Americans seized the papers of this official, in 1846, this grant was captured also. We would, in passing, call attention to the improbability of this part of the statement of Gomez. His witness, Dr. Ord, testifies that these public papers, considered worthless, were used by his steward for wrapping-paper. Gomez was then a resident of Monterey; what prevented him from rescuing his grant from this lot of waste and unregarded paper? But, we proceed. He proved by Abrego that he had seen the grant. To establish the locality, Gomez produced a map or plan, which purported to be the original *diseño* that accompanied his petition. This map, if it were what it purported to be, belonged to the Mexican archives, which were at that time in the custody of Manuel Jimeno, one of the best and most faithful of Mexican officials. Gomez, who was a Government clerk, understood that it was necessary to account for the singular fact that this map or

diseño, which accompanied his petition, and which, together with it, should have been carefully preserved in the archives, was found in his possession. Hence, he says he borrowed it under a promise to return it, which promise he never fulfilled. This much Gomez, or the attorney who drew his petition, understood, and hence this very lame explanation. But Abrego, who is not so well versed in the matter of Mexican grants, when he comes to depose to the fact of having seen this map in the possession of Gomez, says it was attached to the grant. Abrego did not know that the diseño should have been attached to the petition and not to the grant. But another difficulty suggested itself to the mind of the ingenious Gomez. It would naturally be asked, how did it happen that the map was not captured together with the grant. Anticipating this question, Gomez states that while he kept the grant, the only evidence of his title, in a pigeon-hole of the commissary's desk, he deposited, *for greater security*, the map, which Abrego says was attached to the grant, in his own trunk at his house in Monterey. No doubt the contradictions and absurdities of this story were apparent to the board, but they made no comment on them, because they could dispose of the claim upon less offensive grounds. They, accordingly, rejected the claim upon the ground that Gomez never cultivated, or had even seen, the land. Nor has this ground of rejection ever been overruled by the Supreme Court, as the committee would have us suppose. That court did hold that occupation and cultivation were not absolutely requisite to the perfection of a Mexican title; that circumstances might furnish an excuse for such an omission. Thus, in Frémont's case, it was enough that it appeared that the grant was located in a wild and unsettled part of the country, where the hostility of the surrounding Indians rendered settlement dangerous, if not impossible. But no such difficulties are pretended in this case. On the contrary, the land claimed by Gomez is located within thirty or forty miles of San Juan Bautista, one of the oldest missions in the territory. One of the witnesses in this case swears that he had lived for twenty years adjoining this property, and that he had

never heard of the name of Gomez in connection with it. And here let us remark, that there is not one of the grants made by the American Congress, referred to by the committee as precedents for this bill, in which the grant was not based upon the fact of long and continued occupation upon the part of the grantee. The equitable rights accruing from occupancy, the staple of all former bills of this sort, are here totally ignored.

But to proceed with the history of the case. From the decision of the board rejecting this claim an appeal was taken to the district court. Pacificus Ord, the original counsel for the claimant, to whom Gomez had conveyed one-half of his interest in this grant, had now become the district attorney of the United States for the southern district of California. The papers in the cause were first filed in the office of the clerk of the northern district. An entry in the minutes of the clerk states that upon motion, signed by Hartmann and Sloan, an order was made for the transfer of the cause to the southern district. Mr. Sloan swears that the use of his name was unauthorized; that he had never been employed by the petitioner, and at that time had never heard of the cause. The letter of the clerk of the northern district to the clerk of the southern district, enclosing the papers with the order of transfer, is dated June 1, 1857. It could not have reached Los Angeles before June 3, most probably it arrived on June 4. On the 5th of June, Ord procures one Hartmann to move the court to confirm this grant, and Ord then gets up and states that on the part of the United States no objection is made to the motion; whereupon, without argument and without consideration, upon the consent of both parties, Ord, through Hartmann, consenting for himself and Gomez on the one part, and Ord, as district attorney, consenting for the United States on the other part, an order for a decree of confirmation is made by the court. This was, as usual in equity, an order directing a decree to be drawn by counsel in pursuance of the expressed views of the court, the decree to be signed by the judge, and eventually entered. But Mr. Ord, in his double capacity of counsel for the claimant and counsel for the United States, neglected to draw the decree at that term of the court. It

was not until the January following that this attorney seems to have become aware of the insufficiency of this order, and the necessity of the actual signing and entry of the decree. Then he drew the decree, and again, through Hartmann, who swears he acted only at the request and instance of Ord, the United States, that is Ord, consenting, the final decree is entered *nunc pro tunc*, that is, on January 7, 1857, as of June 5, 1857. 8

This decree was for three leagues of land. Leave was obtained, February 5, 1858, to amend this decree, and make it a confirmation of four leagues, instead of three. It will be remembered that Gomez, in his original application to the board of commissioners, swore that his lost grant was for four leagues of land. His petition to the Mexican Governor, which happened to be preserved in the archives, at that time carefully guarded by Capt. Halleck, being produced, showed that he had only asked for *three* leagues. The liberal district attorney did not hesitate a moment to consent, on the part of the United States, that Gomez and himself should have a league more than Gomez had asked for.

Ord's interest in this grant was unknown to the judge of the district court, whose integrity no man ever questioned. When he became acquainted with the character of this nefarious transaction, upon the motion of the district attorney who succeeded Ord, he made an order revoking the decree of confirmation which he had been fraudulently induced to sign. At this stage of the proceedings, Judge Ogier died, and was succeeded by Judge Haight. This officer vacated the last order of his predecessor, upon the ground that it was improvidently granted, the court having lost jurisdiction of the cause after the expiration of the term at which the decree of confirmation was entered.

Next came a series of proceedings in reference to an appeal from this decree of confirmation to the Supreme Court of the United States. Of these proceedings, a recital of which would be tedious, it is enough to say that they were marked by the same badges of fraud and trickery upon the part of the claimant that distinguished the proceedings in the court below. For

some time it was questioned whether the United States, by the treachery of her officer, had not lost the right of appeal. The points arising under this branch of the case are considered and decided in *The United States vs. Gomez*, 23 Howard, 339, and 1 Wallace, 702. In these two cases, the facts, of which the foregoing is a brief abstract, are stated by the court, and the conduct of the claimant, Ord, is made the subject of the severest comment. The court holding, as Chancellor Walworth once said, that a court of equity will go through a stone wall to get at fraud, broke through all the barriers that ingenuity and treachery had interposed to a judicial decision of this case, and having once decided that the case and the parties were still within the reach of the court, made short work of both. They unhesitatingly reversed the decree of confirmation, and ordered the petition to be dismissed. This final decision is reported in 3 Wallace, p. 733. The opinion of the court concludes as follows:

"Regarding the case as regularly before the court, it becomes necessary to examine the merits of the claim. Some suspicion attaches to it, because it is made for four leagues of land; whereas the only document introduced in support of it, which is of the least probative force, represents the original claimant as having asked for but three leagues. The document referred to purports to be a petition of the claimant to the governor; and there is appended to it the usual *informé*; but there is no concession or grant, nor is there any satisfactory evidence that any title of any kind was ever issued by the governor to the claimant. He states in his petition to the land commissioners that he obtained the map or record from the proper officers of the department; but the alleged fact is not satisfactorily proved. Four witnesses were examined by the claimant before the land commissioners, but only one of the number pretended that he had ever seen the grant, and his statements are quite too indefinite to be received as satisfactorily proved.

"Instead of proving possession under the grant, it is satisfactorily shown that he never occupied it at all, and it is doubtful if he ever saw the premises during the Mexican rule. The land commissioners rejected the claim; but before it came up for hearing in the district court, his attorney had been appointed district attorney of the United States, and the proof shows that he conveyed two leagues of the land to the district attorney. The circumstances of the confirmation of the claim in the district court are fully stated in the opinion of the court, when the mandate was revoked and recalled. (*United States vs. Gomez*, 23 Howard, 3, 39.) Comment upon those circumstances is unnecessary, except to say that the confirmation was fraudulently obtained.

"Although the decree was fraudulently obtained, still, inasmuch as it is correct in form, it is sufficient to sustain the appeal for the purpose of correcting the error. The party who procured it, cannot be allowed to object to its validity as a means of perpetuating fraud; especially as he did not appeal from the decree. The decree of the district court is, therefore, reversed, and the case remanded, with directions to dismiss the petition."

And it is the perpetrators of these frauds, a perjured claimant

and a public officer thus branded by the Supreme Court of the United States, who present themselves at your bar and ask, on account of their great merits, to be made the recipients of the bounty of the United States. These are the men who, in the embarrassed condition of the finances, ask you to bestow upon them public lands the value whereof exceeds a million of dollars.

No, say the committee; we ask nothing for Ord and Gomez; it is for this innocent purchaser, William McGarrahan, that we entreat your charity.

Let us see how that is. McGarrahan purchased of Gomez, on the 22d day of December, 1857, before any decree of confirmation had been signed or entered by the district judge. Gomez recites, in his conveyance to McGarrahan, (see p. 35 of Lawrence's report, March, 1867,) that he has already conveyed one-half of his interest to Ord, and that McGarrahan is to take subject to that conveyance. From that moment McGarrahan and Ord became joint owners in, or tenants in common of, this grant. From this fact two consequences ensue: first, either this bill will make McGarrahan a trustee of one-half of the land for Ord's benefit, or the bill should be amended so as to include only one-half of the four leagues claimed. That is, either McGarrahan gets by this bill twice as much as he "innocently" purchased, or Ord gets two leagues of land from the Government whose trust he betrayed. Secondly, from the moment McGarrahan purchased he stood in the shoes of Gomez. Ord from that moment was managing the matter for the joint benefit of himself and McGarrahan; in every act of fraud upon the part of Ord, McGarrahan acquiesced; he had no counsel; he was represented by no one but Ord and (his creature) Hartmann. If he is not presumed to have known of the conspiracy between Ord and Gomez before his purchase, after that period, both in law and reason, he who stood by and sought to partake of all the benefits of this iniquity must, per force, be held responsible for all its enormities. The committee urge that when McGarrahan purchased, the fraudulent action had been completed, the title in Gomez had been perfected, and that McGarrahan purchased

this apparently perfect title in entire ignorance of the means by which it was procured. Nobody who reads this record can come to such a conclusion. When Mr. McGarrahan purchased, the first step only in this long chain of fraud had been taken by Ord. Where was the innocent McGarrahan from December 1857 to the final decision of this case in 1865? Not even a silent spectator of Ord's fraudulent doings, but, in one instance, at least, he is suspected of being an active participator. We say so because the Supreme Court proclaims the fact that the clerk of the district court furnished a false statement of the entry of a certain order in this cause, and they suggest that it may have been done at the instance of the interested parties. Upon this point the court say:

" Mr. Sims, the clerk of the court, (the court for the southern district of California,) deposes that in this case a transcript was called for by letter signed W. W. McGarrahan; that when that letter was received no appeal had been allowed to carry the case to the Supreme Court, and that a motion for that purpose was still under the advisement of the court. The deputy clerk, Mr. Coleman, however, sent to McGarrahan a transcript, which was received by McGarrahan, and that not being satisfactory, it was returned to the clerk with a letter from McGarrahan, stating in what particulars it was deficient, and among them it was deficient in *not having a copy of the order for an appeal to the Supreme Court*, (italicised as in the report,) which McGarrahan suggested would be found in the minutes of the court. To this letter a reply was given by Mr. Stetson, who had succeeded Mr. Coleman as deputy, containing an order for an appeal, as it appears in the transcript before us. It is difficult to determine how such an order found its way into the second transcript of the record, when it was not in the first, and when the clerk deposes that no such order had ever been given. The order for an appeal may have been drawn in anticipation of the action of the court upon the pending motions, and left in the clerk's office unintentionally, and supposed by the deputy clerk to have been passed by the court; or it may have been drawn by Mr. Ord and left in the office to keep up the semblance of his having faithfully represented the United States in the case; or it may be that some one of the parties interested in the land had surreptitiously placed it in the transcript to accomplish the purpose of having the case docketed and dismissed in this court. Dates will in some measure throw light upon the matter. It was written and dated on the same day that the court took under its advisement the motion relating to the appeal. Such antagonism in the action of the court upon the same subject matter, of such importance as this was, would indeed be extraordinary, and the record shows that it does not exist. It is a delicate and most unwelcome task which we are performing, but it must be done in order that violated justice may be vindicated, and that official purity of conduct in our courts may be preserved and be unsuspected." (23 Howard, 338.)

And now for the use to which this interpolated order for appeal might be put; it was the very use to which it was actually applied. The case was docketed, and the appeal was dismissed upon the motion of the appellee, that is, upon the motion of the Protean Ord, who now appears as Gomez, now

as McGarrahan, and now as the United States. So it is: Ord, as the United States, simulates an order for appeal; Ord, as the United States, omits to file the record within the time required; and then Ord, as McGarrahan, procures an order of dismissal, because of the *laches* of the United States; which, it is presumed, will operate as a confirmation of the decree fraudulently obtained against the United States in the court below. And such would have been the result, but that the Supreme Court recognized a fundamental principle outlying the moral sphere of the conspirators, viz, that a court of justice never loses control of an order procured by fraud or misrepresentation.

But suppose Mr. McGarrahan innocent of any actual participation in the frauds of Gomez and Ord, his claim must, nevertheless, be tainted by the foul source from which it is derived. What avails the rule that a party can gain nothing by his own fraud, if the fraudulent title is to be good in the hands of an innocent purchaser? Establish such a precedent, and you at once offer a premium for fraud, by giving the otherwise worthless title a market value. It is unimportant to the United States, if she is to be cheated out of her property by the fraud of Gomez and Ord, whether the fraud of Gomez is to accrue to his benefit or that of his assignee.

Up to this point we have been engaged in showing that McGarrahan has no claim upon the Government for either four, or three, or even two square leagues of land, located in any part of California. Now we propose to show, even more conclusively, that it would be not only a wrong to the Government, but the greatest injustice to individual citizens, to bestow upon him the particular four leagues embraced in this bill.

At a very early period in the history of these land claims, it was found that by means of false and fraudulent surveys, grants of agricultural lands were located upon more valuable tracts in the mineral regions. These surveys were privately made, at the instance and for the benefit of the claimant, and were immediately transmitted to the General Land Office at the seat of Government. Thus, it was only by a journey of

thousands of miles, and at great expense, that an opportunity of examining and contesting the integrity of these surveys could be procured by the settlers or others whose occupancy or rights were affected by them. To remedy this evil, an act was passed, approved June 14, 1860, making it the duty of the surveyor general to give notice for at least sixty days, in some paper published in Los Angeles, of every survey of lands lying in the southern district of California, the plat being in the meantime retained for examination in his office at San Francisco, with leave to settlers and others in interest to question its correctness. By an act of 1864, the time of retention was extended to ninety days.

On the 26th day of June, 1860, McGarrahan made application to the surveyor general of California for a survey of the Panoche Grande. This application seems to have been forwarded to the General Land Office, and on September 4, 1860, the Secretary of the Interior responds by interdicting the survey. Notwithstanding this, a private survey is made under an act of 1862, which affords no warrant for a patent, and it is this secret survey, unpublished and undisputed simply because unknown, that marks the boundaries of the land which McGarrahan asks Congress to grant him, upon the presumption that it is a correct plat and survey of the land confirmed to Gomez by the decree of the district court. (See Reports Nos. 1 and 3 of Commissioner Edwards, pp. 7 and 10 of House Report of Judiciary Committee, March, 1867, on bill for relief of Wm. McGarrhan.)

The Judiciary Committee of 1868 cannot understand how it was that that excellent officer, the Commissioner of the General Land Office, so pertinaciously resisted all the influences brought to bear upon him to procure a patent for McGarrahan, based upon this survey. If the members of that committee will take the trouble to read their own report of last year, their wonder will cease. They will learn that this survey, publication of which was studiously avoided, so far from being even *prima facie* evidence of the true locality of the Panoche Grande, justifies the presumption that it is fraudulent, upon the principle that iniquity ever prefers darkness to light.

Never was there an act in relation to these land claims more wholesome, and for which the poor settlers of California feel more grateful to Congress, than that requiring the publication of these surveys, and the opportunity afforded to contest them. It is the provisions of this act that McGarrahan petitions the very body that passed it, to ignore; an injustice which the Commissioner refused to consummate.

The cautious conduct of the Commissioner has been fully vindicated by the result. It now appears (an examination of the map for 1866, of private land claims in California, will show it) that this land, which Gomez sought with the view of dedicating himself to the charming and flourishing pursuit of agriculture, (the language of his petition is, "*Deseando de dedicarme al hermoso y naciente ramo de la agricultura,*") has been located in a mountainous and sterile region, far removed from the sweet vale of the Panoche Grande; and this, simply because Mr. McGarrahan, the successor of Gomez, affects rather the rude excitement of a miner's life than the soft and delicious repose of an agriculturist. Never before did the successor to an estate differ so much in taste from his predecessor. The only objection that can well be made to this change of location proposed by Mr. McGarrahan is, that it dispossesses of certain mineral property, which for the last fifteen years they have occupied and developed at immense expense, hundreds of those hardy adventurers to whose enterprise and courage this country is indebted for so much of her greatness, and whom the committee sneeringly designate as "squatters."

Vicente Gomez, in his petition to the board of commissioners, states that the land described in his lost grant was bounded on the north by the lands of Julian Ursua, and on the south by the lands of Francisco Arias. This places him north of Arias; and yet the unpublished survey of 1862, adopted and ratified by McGarrahan's bill, locates this claim of Gomez sixteen miles to the south and east of the rancho of Don Francisco Arias, and instead of adjoining the rancho of Ursua, the fraudulent survey places the northern point of the Panoche Grande twenty miles south of the southern line of Ursua. These facts will appear from an examination of the plats of these

several ranches returned to the General Land Office, and of the map of private land claims in California for the year 1866, on which both the ranch of Arias and the Panoche Grande survey of 1862 are delineated.* The evident object of this slipping the valley of the Panoche Grande down to the sterile mountains of San Carlos, was to cover the quick-silver mines lying near the southern boundary of the survey, and which are all of thirty miles south of the ranch of Arias.

As to the merits of Gomez and his right to a patent, these are questions that have been passed on after long and patient investigation, both as to the law and the facts, by the tribunals charged by the Government with the investigation of this subject. Never have a foreign people, coming under a new jurisdiction, met with more liberal consideration than has been awarded the citizens of California by the Government of the United States. Never were liberal enactments more liberally construed than those relating to these land claims by the Supreme Court of the United States. Yet even in the exercise of this unbounded generosity, the Supreme Court could find no warrant to confirm this claim of Vicente Gomez. It was not rejected, as the committee intimate, upon any technicality. The court found, as matter of fact, that Gomez had never had a title to this land, and that he could claim no equitable consideration from occupancy and improvement; it absolutely appearing that he had never seen the property. In short, that he had no claim to this ranch, either legal or equitable, that might not be preferred by any other citizen or resident of California.

Such questions are much better fitted for the judicial than the legislative forum. So thought the Congress of 1851, who turned over the whole subject to the tribunals designated in the act of March 3, of that year. It will be an unfortunate day for the country, and for Congress itself, when the legislature undertakes to hear appeals from the decisions of the court. We know that the committee who have recommended the passage of this bill disavow any intention

* See also certificate of the Commissioner of the General Land Office—Appendix No. 2.

to reverse the decision of the Supreme Court in this case ; but, besides that a pamphlet signed by William McGarrahan has been privately circulated, criticizing in the severest manner the decision of the court and the conduct of Mr. Justice Clifford in particular, we maintain that the passage of the proposed bill would itself be a virtual reversal of the decision. The decision of the court is that no patent should issue to Gomez and Ord ; this bill provides that a patent shall issue to Ord and the assignee of Gomez.

But it is said that, under the decision, the title to the property is in the United States, and that Congress may make any disposition of the land belonging to the Government. This is undoubtedly true, but the question is not what Congress may do, but what they should do with the public land.

But let us assume the correctness of the decision of the Supreme Court, (the committee and Mr. Wilson say that nobody proposes to question it,) how then stands the proposition of Mr. McGarrahan? It may be thus stated: "I admit that Ord's attempt to secure a fraudulent confirmation was a failure; I admit that Gomez claimed *four* leagues in the valley of the Panoche Grande, whilst his petition shows he asked for only *three*; I admit Gomez never had a grant of any kind from the Mexican Government, and neither he nor I ever occupied a foot of land in the Panoche Grande; but I learned that the claim of Gomez had been confirmed by the district court; I knew the decree was liable to appeal and reversal, but I thought it would not be reversed; (with Ord to manage both sides, he had undoubtedly good reason to come to that conclusion.) I bought two leagues, or one-half of the grant. Having thus *innocently* purchased of Gomez *two* leagues of *agricultural* land in the valley of the Panoche Grande, to which my vendor had no title, legal or equitable, I pray the United States, on account of this very meritorious action on my part, to permit me to purchase, at the minimum price, *four* square leagues of *mineral* land in another and different locality, which have for the last fifteen years been occupied by *bona fide* settlers, under the mining laws of California, and on which they have erected improvements at a cost of four hundred thousand dollars; all of which is necessary to my 'relief.'"

This would be an unvarnished statement of the facts in the case, and of the nature of the petitioner's prayer.

In the report of the committee, frequent allusion is made to the Suscol act, and it is referred to as a precedent for this bill. This reference is a little unfortunate for the petitioner; for day differs not more from night than do the circumstances under which the beneficiaries of that act and McGarrahan appear before this body. The Suscol act was passed March 3, 1863. It gives to *bona fide* settlers and occupants of the Suscol grant, who had purchased from Vallejo, leave to enter their lands, to the extent of their actual occupation, at \$1 25 per acre, with a proviso that *no claim under the act should extend to mineral lands*.

The provisions of this act are made general by the act of 1866, (see vol. 14 Statutes at Large, p. 220;) that is, all purchasers from Mexican grantees, like the Suscol purchasers, are authorized to enter the lands so purchased at the minimum price, where they have *used, improved, and continued in the actual possession of the same*; with the same proviso respecting the mineral lands.

Now, if Mr. McGarrahan wants nothing more than was accorded to the Suscol grantees, this bill is entirely unnecessary for his relief, since that is already secured to him by the general act of 1866.

But the phraseology of the Suscol act is not the phraseology of the McGarrahan act; nor is there a word in it that he will consent to adopt; first, because this "innocent" was not a purchaser from a Mexican grantee; secondly, because he never occupied a foot of the land he asks for; and, thirdly, because the terms of that grant would confine the restless spirit of Mr. McGarrahan to the "charming pursuit" of agriculture, for which he unfortunately seems to possess very little taste.

But there is still another reason why this act should not pass. It is admitted, indeed it cannot be questioned, that the title to the land described in this bill, on the 26th day of July, 1866, remained in the United States. It is indisputable that the tract contains lodes of quicksilver and other precious metals. On that day the faith of the nation was pledged to vest the

title to these lodes in a class of citizens to which Mr. McGarrahan does not pretend to belong. On that day Congress passed an act entitled "An act granting the right of way to ditch and canal-owners over the public lands, and for other purposes." Of that act the first section reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of mines in the several mining districts, so far as the same may not be in conflict with the laws of the United States."

The following is the second section:

"And be it further enacted, That whenever any person, or association of persons, claims a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local custom or rules of mines in the district where the same is situated, and having expended in actual labor and improvements thereon an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant, or association of claimants, to file in the local land office a diagram of the same, so extended laterally or otherwise as to conform to the local laws, customs, and rules of mines, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode, with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition:

The third section provides that before the patent shall issue, the claimant shall pay to the United States the cost of survey, and five dollars per acre (McGarrahan wants it at \$1 25 per acre) for each and every acre contained in the survey.

Now, the fact is, that one association of claimants, incorporated under the name and style of "The New Idria Mining Company," having for fifteen years been in possession of a quicksilver lode, and the land extending laterally, in conformity with the laws, customs, and rules of the miners of that district, the same lying within the limits of the secret survey of the Panoche Grande, since the rejection of the claim of Gomez by the Supreme Court and the passage of this act, doubly assured by both that they would be secure in so doing, has expended thereon, not one, but one hundred, thousand dollars, in development and improvements; and the question is now, whether the United States will prefer such purchasers, at five dollars per acre, to McGarrahan, at a dollar and a quarter per acre.

We think the legislature will not be long in choosing between the two.

Again: This being public land, it may be, and such is believed to be the fact, that much of it has been covered by school-land warrants purchased from the State of California. It has all been surveyed, and is open to such location, such of it, at least, as is not included in the mineral district. The effect upon such parties of the passage of this bill would be to clothe McGarrahan with the power of levying "black mail" upon them by threat of litigation, which, in California, is both tedious and expensive.

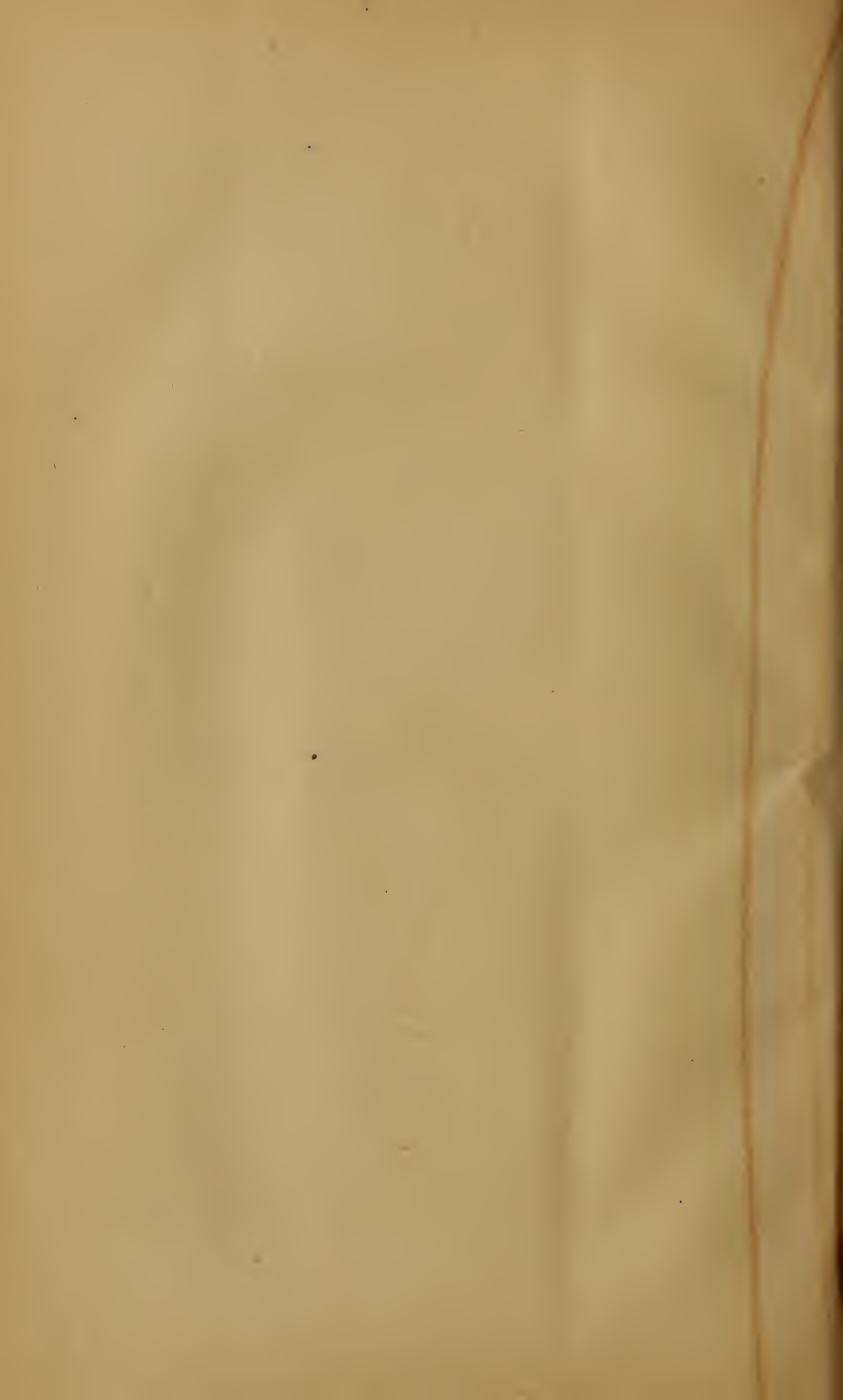
We conclude by asserting that if McGarrahan has any claim upon the United States, derived from his transaction with Gomez, that there is no more reason why that claim should be discharged by a grant of the reduction-works and improvements of the New Idria Company, than those of the Gould & Curry, or any other association located on the Comstock lode.

In the appendix will be found some documents, to which we beg leave to refer, in support of the statements and views herein advanced.

C. T. BOTTS,

3

Counsel for the New Idria Mining Company.



APPENDIX.

No. 1.

The following is an extract from the opinion of the Supreme Court in the case of *United States vs. Gomez*, 23 Howard, 332:

"Mr. Ord was originally the attorney of Gomez before the board of land commissioners, and filed his petition there as such on the 9th February, 1853. He was not then district attorney, but he became so on the first of July, 1854, before the land commissioners decided the case against his client. After his appointment, and after an order had been obtained, at his instance, to remove the cause from the northern district of California to the southern, of which he was the district attorney, and whilst the cause was pending in the latter, he took from Gomez, for the nominal consideration of one dollar, a transfer to himself for one-half of the land in controversy. This Mr. Ord admits in his affidavit, presented to this court by counsel. The conveyance to him bears date on the 24th of November, 1856. It was acknowledged on the same day by Gomez, before a notary public of the county of San Francisco, and was, at the request of Mr. Ord, recorded in the county of Merced on the 26th November, 1857; was also filed for record in the county of Fresno on March 26, 1858, and again recorded by Mr. Ord in Monterey county the 3d May, 1858. A copy of that conveyance is now before us. These dates show that no record of the conveyance to him was made until after the claim had been confirmed by the district judge, upon his representation that, as district attorney, there was no objection to its confirmation; in other words, that he thought the claim a valid claim, and was within the rulings of the court in other claims of the same kind.

"We shall cite the notice in its words; for, as it had been in fact the subject of the court's action, and could not have been so without the knowledge of Mr. Ord, and without his agency, it devolves upon him the task to disprove the declarations of Mr. Hartman of the forgery of the name of the firm of Hartman & Sloan to the paper. We ought to remark, however, that Mr. Sloan, of the firm, is not shown by any paper to have had any personal agency in the matter. The notice is: 'Now, on this day came the parties, the appellant by Hartman & Sloan, and the appellee by P. Ord, United States district attorney: Whereupon, on motion of the attorney of the appellant, it is ordered that the transcript and papers transmitted from the northern district court be filed in this court, and that the petition for a review of the same be entered thereon, and that the claimant have leave to proceed in said cause, the same as if it had been originally filed in this court.' On the same day, a petition was filed for a confirmation of the claim.

"After the confirmation of it in the manner as will hereafter be stated, Mr. Sloan, upon being told of the motion, and that it was signed by the firm of Sloan & Hartman, but, in fact, as if the style of their firm was *Hartman & Sloan*, made his affidavit under a commission instituted by Judge Ogier, that neither as a member of the then firm of Sloan & Hartman, nor otherwise, was he ever retained or employed in the case; that he never wrote nor authorized to be written any *petition or other paper* in the case; that he never had seen such a petition; that he had never authorized any one to use his own name,

or that of the firm of Sloan & Hartman, in the case; and that, if the paper was signed as it is represented to be, it had been without any consultation with him, or his consent or approbation.

* * * *

"The motion made for the removal of the cause to the southern district is said to have been signed by E. W. F. Sloan, Esquire, and presented by him in open court; and the order said to have been passed recognizes that as a fact. On the same day the firm of Hartman & Sloan is reported in the transcript to have filed a notice of appeal with the clerk of the district court for the southern district. The paper has all of the formality and substance which such a paper should have, but Hartman & Sloan deny the fact of having had any agency in making such a motion; and these separate affidavits would be sufficient to sustain their disclaimer, were it not, so far as Hartman is concerned, that his subsequent conduct in the case shows a connection between himself and Mr. Ord, which throws suspicion upon both; and that is aggravated by Hartman's deposition, by that of other persons, and by the narrative given by Mr. Ord of his conduct in the suit..

"Hartman then makes his affidavit, that he had no knowledge who made and caused the petition to be filed, nor by whose authority and direction the same was done. But he states that, whilst attending the June term of the southern district court in 1857, Mr. Ord, then United States district attorney, asked him if he would do him the favor to present a claim to the court for confirmation, stating it was a case in which there would be no opposition on the part of the Government. That, not suspecting there would be anything wrong about a claim to which the Government had no objection, he consented to do so; that, on the same day, the court being in session, and he being seated at the bar table, Mr. Ord passed to him the transcript in the case of Gomez and the United States, which he read to the court without any remarks, supposing it to be the case of which Mr. Ord had spoken to him; that after he had finished reading it, Mr. Ord remarked to the court that there was no opposition on the part of the Government to a confirmation; whereupon, the court replied that there being no objection, the claim would be confirmed as a matter of course. Mr. Hartman continues his narrative of his further connection with the case and with Mr. Ord, six months after, at the December term of the court, when it was held at Los Angeles. He says that when Mr. Ord remarked to him that it had been omitted, at the time of the confirmation of the claim, to have a decree signed by the judge; that Mr. Ord requested him to draw a decree, and to present it to the judge, to be signed *nunc pro tunc*. He says that he did so, without knowing or suspecting that Mr. Ord had an interest in the land claimed by Gomez. This statement by Hartman of his agency in the confirmation of the claim, and in getting a decree upon it six months afterward at the instance of Mr. Ord, is denied by the latter in his affidavit, *excepting as to his declaration to the court that the Government had no objection to the confirmation of the decree*. The latter he admits in stronger terms than have been given. We shall use the affidavit for other purposes, and will have it printed in connection with this opinion, in justice to Mr. Ord, that the relations between himself and Mr. Hartman may be properly estimated from their respective declarations concerning it, only remarking now that there is proof that Mr. Hartman had subsequently declared himself to have been the attorney of Gomez in the case; that he had been so in all that he had done in the case; and that he had charged and demanded a fee for his services. It is not necessary for us to attempt to reconcile these differences, but it has certainly turned out unfortunately for Mr. Ord, in raising a violent presumption, from the manner in which they acted in the cause, that there was a concert between them to reverse the decision of the commissioners, and to obtain a decree in the district court for the claimant."

The court then sums up the facts of the case as follows :

"The record upon which this case was docketed and dismissed, in connection

with the book of exhibits sent to this court by Judge Ogier, establish, in our view, the following facts:

"That Mr. Ord became the purchaser of half the land in controversy from Gomez, the claimant, when he was the district attorney of the United States; that whilst he was district attorney he prepared, in his own hand, the paper signed by S. O. Crosby for the removal of the cause from the board of land commissioners to the district court; that Mr. Ord did not officially, as district attorney, represent the United States in the case in the district court in any one particular, but allowed it to be done by others who were interested in establishing the claim of Gomez, to whom he gave his official confidence, and who are shown by the record not to have been the retained attorney of Gomez; that he permitted a judgment to be taken against the United States without argument or the production of proof to establish the validity of the claimant's right to the land, by saying to the court, in his official character, that the United States had no objection to the confirmation of the claim. And it is established by the record itself that no appeal has been given to the United States by the court below. Mr. Ord admits that he relies upon the declaration only of the person to whom he confided the order which he drew for an appeal that it had been granted by the court. Under such circumstances we conclude that no appeal had been granted; that the cause was not before us when the appellee made his motion to docket and dismiss it.' * * * * All that we shall now do will be to correct any irregularity in the order given by this court in a case in which we believe it had no jurisdiction, and because the circumstances of it disclose that the judgment in the court below had been obtained by contrivance and with the consent of the district attorney, in violation of his obligations to the United States, from which he necessarily anticipated a benefit, being then owner of half the land in controversy."

The court then proceed to cite two English cases to show that an appellate court may, upon motion, order a judgment rendered upon appeal to be amended, vacated, or discharged, when such judgment has been obtained by suppression or misrepresentation.

Thus stood the case in 1859. The following is even a more full account of the history of this case than any yet given. It is the statement of the Reporter, taken from 3 Wallace, 752, (December Term, 1865.)

"This was an appeal, by the United States, from a decree of the district court for southern California, under the act of March 3, 1851, to settle private land claims in California, reversing a decision of the board of land commissioners, and confirming to one Vincente Gomez a claim for a tract or *rancho* called the *Panoche Grande*.

"So far as the title involved in the claim of Gomez was concerned, the case could embrace nothing, of course, but the question whether the title was shown or not; whether the claim was well founded, or the reverse of it?

"As respects this matter of the claim: The petition of the claimant to the governor was for a place described as Panoche Grande, of the extent of *three* square leagues. Appended to it was the customary *informe*; but there was no concession or grant, nor sufficient evidence of the issue of a title. It was asserted, but not proved, that the claimant had obtained the map in the record from the proper officer. One witness only, of several examined, alleged that he had ever seen the grant, and no possession was shown. A neighbor of Gomez, who had lived for twenty years in the vicinity of the land claimed, and had known Gomez and his father before him, had never heard, as it appeared

afterwards, of Gomez having any land thereabouts. The commissioners rejected the claim. Whether the district court, on appeal, if it had examined the case and been acting advisedly, would have done the same, can only be inferred. It did not, however, examine the case, nor act advisedly. The person who had been the counsel of Gomez, one Ord, having become the representative at law of the United States as the district attorney for that part of California, entered into a bargain with Gomez to allow a reversal, by the district court, of the decree of the board, and a consequent confirmation of the claim, on condition of receiving himself a portion of the land; which afterwards he did receive.

"By such an abuse and betrayal of his official trust, as the reporter understood the case, the decree above-mentioned was obtained. So far as Gomez was concerned, therefore, whatever title he had derived no validity from the decree.

"The allegation was, however, that the land was now owned by McGarrahan, who purchased it in December, 1857, after a decree of confirmation was pronounced by the court, who, having had no suspicion that there was any thing fraudulent in the judicial proceedings by which the title was confirmed, was not affected by Ord's fraudulent act, and who stood in the position of an innocent purchaser, without notice.*

"Representing this person, and desiring to get the case *dismissed* from the court, as the first step in establishing his title, *Messrs. Cushing and Stone*, in his *behalf*, set up that this court had no jurisdiction of the case. Urging, with what force they could on the evidence, McGarrahan's title as a *bond fide* purchaser for value of a title regular on its face, they set up further, pressing it strongly, that the court had no jurisdiction to entertain the appeal:

"1. Because the appeal was not taken within five years from the date of the decree.

"2. Because there was no citation.

"3. Because the appeal was not entered at the term of this court next succeeding the appeal.

"4. Because the pretended appeal, by virtue of which this entry was made, lost all its legal effect, by reason of the subsequent proceedings in the district court, on the part of the United States district attorney.

"5. Because the decree appealed from was not a final decree.

"To understand these grounds, a narrative must be borne with by the reader: '*longæ sunt ambages*;' complicated and dull, perhaps, as well. The history has been once told in the reports of two years since. But not to refer the reader for half the case to a volume which he may not have at hand, the reporter must request him to renew his grief, and read it all again.

"The case was heard in the district court of southern California, June 5, 1857, on which day the court delivered its 'opinion,' confirming the claim for three leagues, and ordering 'a decree' to be entered up, in conformity with the *opinion*. But no decree *was* entered at that time. Was it that a thing begun in fraud found its author infirm of purpose, and was followed by irregularity? The cause did not appear. On the 7th January, 1858, a decree *in extenso* was filed, describing the land confirmed as 'three' leagues. The decree ended thus:

"And it appearing that, on the 5th June, 1857, the lands had been confirmed by the court to the said claimant, and it having been omitted to sign and enter a decree therefor, at the date last aforesaid, it is ordered that the same be done now for then."

"On the 4th of February of the same year, the court ordered that the claimant have leave to amend this decree by substituting *another* in its stead."

"Gomez did accordingly, on the day following, procure another decree to be entered. It was much like the other, giving the name of the tract and boundaries, as it did; describing it, however, as containing *four* leagues. This decree ended thus:

* NOTE.—It appears that the question of McGarrahan's being an innocent purchaser, the string upon which he harps before Congress, was made and submitted to the Supreme Court. The decision of that tribunal was not favorable to the appellee. C. T. B.

"It appearing that heretofore, to wit, on the 5th June, 1857, &c., the claim in this case had been confirmed by the court, but that it had been omitted by the court to sign the decree of confirmation at the time the same was made—

"It is, therefore, further ordered by the court, that the same be signed *now as then*."

"In due time, the sin of the district attorney found him out. He withdrew from the country; and on motion of the United States it was, on the 21st March, 1861, ordered by the court, (Ogier, J., sitting):

"That all proceedings heretofore had in the cause be set aside, and the cause be put on the calendar, and set for trial *de novo*, according to law.

"But, behold a new incident! Mr. Justice Ogier died. Another judge sat in his seat, and *he*, thinking that, after the lapse of a year no power had vested with his deceased brother to alter or modify a decree, except to correct some clerical error, 'with great reluctance,' on the 4th August, 1862, vacated the order of March 21, made by his predecessor.

"*The case thus stood, a decree entered on the 7th January, 1858, (or possibly on the 5th of February following) as of the 5th of June, 1857.*

"*At the same time, on the 25th August, 1862, on motion in open court—no citation having been issued—an appeal was allowed the United States 'from the decision and decree of this court confirming the claim of the claimant herein;'* and on the 6th of October following, the district attorney, reciting that the claimant was 'desirous of moving the court to set aside the order for appeal,' agreed, by entry made on the minutes, that all proceedings should be stayed till the next term, 'so as to give the claimant an opportunity to make such motion.' On the 1st December, 1862, a motion to vacate the appeal was made and heard, and on the 4th the order for appeal was vacated; the grounds of the order being that the decree having been entered *nunc pro tunc*, took effect as from June 5, 1857, and not from January 7, 1858; thus, of course, making more than five years to the 25th of August, 1862, when the appeal was allowed."

"And now came an episode; one of a sort rather unusual in judicial doings. The clerk of the district court refused to give a copy of the record. The appellants, represented by Mr. Goold, of the California bar, 'special counsel of the United States,' *had asked* for a copy on the 10th of October, after the appeal was allowed, and the clerk had promised to give it to him.

"Not getting it at the promised time, he asked for it again on the 2d of December; the clerk now informed the counsel 'that he had *changed his mind on the subject*, and would not prepare or deliver a transcript in said cause.' Mr. Goold 'offered to pay said clerk his customary fees for a transcript of said record, but said clerk persisted in his refusal to prepare one.'

"In anticipation, it would seem, of what was about to happen, the Congress of the United States had intervened, and on the 6th of August, 1861, passed a statute, enacting:

"'That the district attorney of the United States of any district in California may transcribe and certify to the Supreme Court of the United States the records of the district court of his proper district in all land cases wherein the United States is a party, upon which appeals have been or may be taken to the Supreme Court of the United States; and records so certified by such district attorney, under his hand, and filed in the Supreme Court of the United States shall be taken as true and valid transcripts to the same intent and purpose as if certified by the clerk of the proper district.'

"McGarrahan, in turn, applied 6th April, 1863, to the district court [Haight, J.] for an injunction on the clerk and attorney to restrain them from making out any transcript; the ground of the application being that the copy asked for was for the purpose of an appeal, and that no appeal was pending. The court refused an injunction, as not a proper remedy, but—observing that no appeal was pending, or from the lapse of time ever could be taken, and that the district attorney had no power to certify copies under the act of Congress, except there was one, and that a certificate would be null, accordingly—declared

that procuring copies on behalf of the United States in such a case was a fraud on the Government, and not to be tolerated, and that 'in this case, as in most litigations which had come under his observation, private parties were seeking their own ends, and conducting litigations at the expense of the United States, wherein the final result was matter of entire indifference so far as the interest of the Government was concerned.'

"The attorney general, Mr. Bates, in person, now interposed. He wrote to the judge, and by letter sent to Mr. Goold at San Francisco, directing him to obtain a copy, calling on the district attorney of the United States at San Francisco for any needed 'aid.' Provision was again made for the clerk's fees. Telegrams were sent across the continent. But it was in vain. Neither request, entreaty, demand, nor offered fees besides, procured the record.

"The district attorney accordingly set to work to prepare and certify a roll himself. But the custody of rolls was not with him. They were in the power of the clerk, as had been his own sign manual and official seal. The district attorney could control the one no more than he could control the others. He happened, however, to possess copies of all the parts of the record except the transcript sent up by the late board of land commissioners.

"Putting all in proper sequence, he prepared a transcript of a record, certifying 'that the foregoing one hundred and seven pages are a full, true, and correct copy of *all* the proceedings, entries, and files in the district court for the southern district of California, *except* the transcript from the late board, &c., in the case of the United States *vs.* Gomez, No. 393, for the claim called *Pan-oche Grande*.'

"On this record the case came here, and was docketed in February, 1864."

The opinion in this case was delivered by Mr. Justice Clifford. The intermediate points were all decided against the appellee. As to the merits of the claim of Gomez, they are disposed of in a single page. This portion of the opinion is quoted at p. 7 of the brief.

It is this opinion which Mr. McGarrahan assails in his pamphlet. All we have to say is, that it was an unanimous opinion.

No. 2.

In the petition of Vincente Gomez to the board of land commissioners, filed February 9, 1853, the tract claimed is described as being bounded "on the south by the lands of Francisco Arias; on the north by the lands of Julian Ursua and the low hills; and on the west by the barren hills, as explained by the map hereto annexed." (See p. 21 of Judiciary report, March 26, 1867.) The map referred to places the rancho of Arias on the west instead of the south. In his petition to the Governor of California, dated Monterey, March 13, 1844, Gomez asks for "the place known by the name

of Panoche Grande, bounded on the north by Don Julian Ursua; on the south by the Serranias, (mountain range;) on the east by the Valle de los Tulares; and on the west by Don Francisco Arias." (See p. 28 of same report.) In his application to the board the tract is described as containing *four* square leagues; in his petition to the Governor he asks for *three* square leagues. The decree of confirmation of the district court describes the tract as it is described in the petition of Gomez to the Governor of California. It is not pretended that the surveyor general had any other authority for making a survey of the Panoche Grande, or any guide in making such a survey, except what is contained in this decree. We see, then, that the tract confirmed to Gomez was to adjoin Ursua on the north, and Arias on the west. Curious to know whether these plain and unmistakable directions had been regarded in the secret survey of September 11, 1862, we made inquiries of the Commissioner of the General Land Office, to which we received the following reply:

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE, *May* 18, 1868.

"C. T. BOTT, Esq., present.

"SIR: Your letter, without date, to Hon. W. M. Stewart, U. S. Senate, was referred to this office 16th instant, in which you request information as to the relative positions of the survey of the rancho in California called "Real de los Aguilas"—Francisco Arias and Saturnino Cariaga original claimants—and the survey of the unconfirmed claim called "Panoche Grande"—Vincente Gomez original claimant.

"In reply, I have to state that the survey, dated August 25, 1866, of the rancho "Real de los Aguilas," as laid down on the connected map of California accompanying the annual report of the office for the year 1866, is in townships 13 and 14 south, of ranges 7, 8, and 9 east, Mt. Diablo meridian. While the survey, dated September 11, 1862, of the "Panoche Grande" is in townships 16 and 17 south, of range 11 east, and townships 17 and 18 south, of range 12 east, of the same meridian.

"In other words, said map shows the northwest corner of "Panoche Grande" survey to be about twelve miles south and about the same distance east of the southeast corner of the survey of the rancho "Real de los Aguilas."

"It is proper, however, to state that our records show Francisco Arias as the original claimant in another case before the land board for the place designated "Arias Ranch." In this latter case, however, the claim for confirmation was rejected by said board February 27, 1855, but whether it was afterwards confirmed by the judiciary is not known to this office, no return in the case having been received here, and hence we are unable to designate its *locus*.

"It is in place also to state that the survey of the Rancho "Real de los Aguilas" is one under the act of Congress approved 1st July, 1864, (Statutes vol. 13, p. 332,) requiring the approval of the Commissioner of the General Land Office to become final; and which survey has not been passed upon definitely by this office.

"Very respectfully, your obedient servant,

"JOS. S. WILSON, *Commissioner*."

It appearing from the above that there might be a rancho other than the Los Aguilas" referred to as bounding Gomez on the west, we addressed further inquiries to the Commissioner, which called forth the following communication :

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE, *May 22, 1868.*

"C. T. BOTTS, Esq., present.

"SIR: Referring to your letter of yesterday, I enclose herewith an extract, marked A, from the petition of Adolph Corrill and Baltazar Toche, in case No. 753 of the board of California land commissioners, as the same is recorded on p. 150, vol. 2, of the record of petitions in this office.

"In reply to the inquiry under second head in your letter, I have to state that there is on our files the survey of a rancho called 'Panoche de San Juan y los Carrisalitos,' situated in township 11 south, of range 9 east, and townships 12 and 13 south, of ranges 9 and 10 east, Mount Diablo meridian, California, which is the only case on our records in which Julian Ursua appears as original claimant from the Mexican Government.

"As stated in our letter to you of the 18th inst., the survey dated 11th September, 1862, of the Panoche Grande, is in townships 16 and 17 south, of range 11 east, and townships 17 and 18 south, of range 12 east, Mt. Diablo meridian.

"Very respectfully, your obedient servant,

"JOSEPH S. WILSON, *Commissioner.*"

Enclosed in the above was the following:

(Copy.)

"A.

"No. 763.—PETITION OF ADOLPH CORRILL AND BALTAZAR TOCHE.

"*To the Honorable Commissioners to settle Private Land Claims in California:*

"The petition of Adolph Corrill and Baltazar Toche respectfully shows, that on the 10th of December, 1839, Don José Castro, prefect of the first district of California, by virtue of the authority in him vested, granted to Francisco Arias a tract of land called the "Arias ranch," in the present county of Monterey, near the mission of San Juan Bautiste, bounded by the Monterey road, the ranches of Don Manuel Larios, Don Santiago Stoches and Don Angel Castro, containing about one league, more or less, and more particularly described in the title, map, and act of possession herewith, to be filed and presented in the case, additional time to prepare translations of which the petitioners pray may be granted them. * * *"

To these communications from the Commissioner of the General Land Office we annex the following certificate of the Hon. Delos R. Ashley, of the House of Representatives:

"I hereby certify, that for several years I resided in the county of Monterey, California, and am familiar with the Mexican ranches in that part of the State. I have examined the description of the 'Arias ranch' referred to in the petition of Corrill and Toche, and have frequently visited it. It lies west by north of the ranch of Ursua and of the 'Los Aguilas,' and is still farther removed from the survey of the 'Panoche Grande' than either of them, being within two miles of San Juan.

"D. R. ASHLEY.

"WASHINGTON, *May 25, 1868.*"

Thus it will be seen, that by the secret survey of September 11, 1862, the surveyor, instead of locating Gomez directly on the south of Ursua and on the east of Arias, as directed by the decree of confirmation, starts at a point twenty miles south of the southern line of Ursua and twelve miles south and as many east of the southern line of Arias, and then extends the survey twelve miles south, so as most obligingly to take in the quicksilver mines of San Carlos. Who, with these facts before his eyes, can have any faith in the integrity of this survey?

No. 3.

As to the failure of McGarrahan in his attempts to obtain a patent based upon the survey of September 11, 1862, Mr. Wilson, in his report of May 8, 1868, on behalf of the Judiciary Committee of the House of Representatives, says :

"As seen after nine years of litigation, Mr. McGarrahan, the present claimant, succeeded in acquiring two distinct confirmations of his title.* It was then, in accordance with the act of Congress of June, 1862, he applied to the United States surveyor general of California for a survey of the said tract of land, and which officer caused the survey to be made and approved September 11, 1862. This survey was transmitted immediately thereafter to the General Land Office, and a patent for the property was demanded.

"2. Here, again, he was confronted by the New Idria Mining Company, before referred to. The Secretary of the Interior at that time, (Hon. Caleb B. Smith) after argument in the case, ordered the patent to issue.

"Thus, again, for the *third* time, the title to the Panoche Grande was found to be in Mr. McGarrahan.

"Some unknown cause delayed the execution of this order, and the patent was not issued. This neglect, or refusal, was persisted in throughout the remainder of Mr. Secretary Smith's term. The matter was then brought to the notice of Mr. Usher, the new Secretary, before whom it was again argued, and by whom a patent was directed to be issued. Neither the order of Mr. Smith nor Mr. Usher was obeyed, for some reason not yet divulged or ascertained.

"For the *fourth* time, the title of Gomez and his grantee was decided to be good and available in law. A request was then made by the claimant of President Lincoln, that he would make an examination of the case, and determine it upon its merits. This he consented to do. Printed briefs were laid before him, and upon full consideration of all the facts and circumstances, he directed the Secretary of the Interior to cause a patent to issue to Mr. McGarrahan. And thus, for the *fifth* time, Mr. McGarrahan was declared to be entitled to the property or rancho, and that neither the United States nor any other person have lawful claim to the same.

* NOTE.—The two confirmations here referred to were those procured from the district court by the connivance of Ord.

"In accordance with this order of the President of the United States to the Secretary of the Interior, a patent was actually made out, but, for reasons not fully explained, never delivered to him for signature."

To furnish the explanation, so much desired by the committee, of the reason why the patent was withheld from McGarrahan, we make the following extracts from a report of the same committee, submitted by Mr. Lawrence March 26, 1867. The first is the reply of the Commissioner to the note of the Secretary of the Interior directing the issuance of the patent. It runs as follows :

"GENERAL LAND OFFICE, January 3, 1863.

"SIR: I have to acknowledge the reception of the decision, bearing date December 29, 1862, of Secretary Smith, in the case of the Panoche Grande claim in California, which is the subject of my report to the department bearing date the 29th of October last, and reported against in enclosed Ex. Doc. No. 84, first session 36th Congress, H. R., page 38.

"In that decision the Secretary in substance has held—

"1st. That the decree of the district court confirmatory of the title has become final and beyond appeal; and,

"2d. In regard to the survey fixing the *locus*, the said decision declares as follows: 'The act of June 14, 1860, which required the surveyor general to publish for a given time the fact of the survey, with a view of affording to persons interested an opportunity to contest the boundaries fixed by the survey, is directory to that officer.'

"'The law directs the proceedings before the survey shall be reported to the General Land Office. The survey having been reported in this case, the presumption arises that the surveyor general has performed all the prerequisite duties joined by law;' and further, as follows: 'Besides, by the law of June 2, 1862, the proper officers are required to survey such grants upon the application of the claimants, they paying or securing the expense, and such survey is declared to be but *prima facie* evidence of the true location of the land claimed or granted.'

"In regard to that portion of the premises upon which the Secretary raises the presumption that the surveyor general has done his duty by making publication of the survey as required by the act of June 14, 1860—acts 1859 and 1860, page 33—so that opportunity may be afforded by notice for appeal to be taken from the *locus* fixed by the survey, I have the honor—

"First, to invite your attention to the enclosed letter, dated September 11, 1862, from that officer, negating the presumption of publication of notice pursuant to said act of June 14, 1860, by declaring that 'this survey was executed under the act of Congress approved June 2, 1862.'

"Second, that the said act of June 2, 1862, does not order the issuing of a patent; and,

"Third, that the act of March 3, 1851, vol. 9, page 633, which delegated authority for the adjudication of claims in California, (the law under which the Panoche Grande title is held by the Secretary's decision to be finally confirmed by decree of the district court,) expressly requires, as the basis of a patent, 'an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor general of California.'

"The invariable practice under law, in the case of finally certified claims, is to require such 'certificate of confirmation' and approved plat with certificate, that the publication has been made according to the law of June 14, 1860.

"The question therefore arises, whether the said decision of the Secretary designs dispensing with those prerequisites, and whether it contemplates the

summary issue of the patent upon the said plat of survey reported, as made by the surveyor general under the act of June 2, 1862, although that law does not, as stated, order the issue of the patent.

"Further: It will be observed that the survey of the Panoche was made July, 1862, and that the third section of the act of Congress, approved May 30, 1862, for reducing 'the expenses of the survey and sale of the public lands of the United States,' expressly declares 'that patents shall not issue for any such private claim until the cost of survey and platting shall have been paid into the treasury of the United States by the claimant.'

"Now, we have no information from the surveyor general as to whether the cost of said survey has been paid or provided for by the claimant.

"As the Hon. J. A. McDougall has, however, urgently, in person, pressed the immediate issue of the patent, claiming it under the aforesaid decision and command of the head of the department, I deem it my duty to bring the foregoing exceptions to your attention, and ask further instructions in the matter touching the question as to whether or not it is the design of the department that the patent shall issue on the papers as they now stand.

"With great respect, your obedient servant,

"J. M. EDMUNDS, *Commissioner*.

"Hon. SECRETARY OF THE INTERIOR."

To this the Secretary of the Interior (Mr. Usher had now succeeded Mr. Smith) replied:

"I think, therefore, that the decision of my predecessor, directing the patent, was correct, and that it should issue. I would advise you, however, to cause to be inserted in the patent, by way of recital, the fact that it was issued upon a survey made under the act of June, 1862, and also, by way of greater caution, to insert a provision that the description of the land therein conveyed was to be taken against the United States, or any person making claim to the land, as *prima facie* evidence only of the true location of the land granted, and to be modified or avoided in that respect if the same should be found to be erroneous."

And in this shape the patent, no doubt, would have issued, had this direction not been countermanded by the following order:

"DEPARTMENT OF THE INTERIOR, WASHINGTON, *March 13, 1863.*

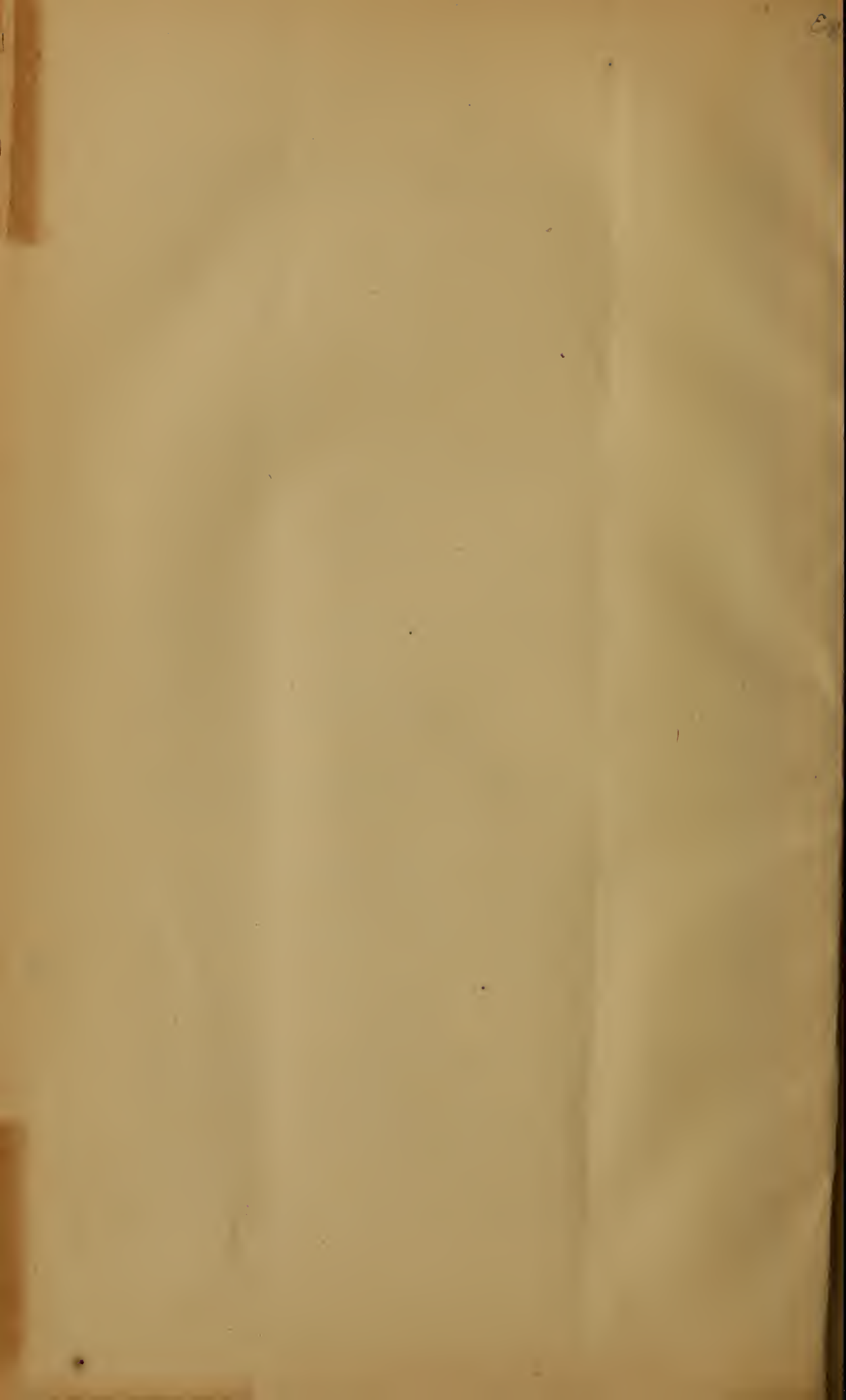
"SIR: The Attorney General has notified this department that he intends to have the case of the land claim of Vincente Gomez, known as the Panoche Grande, brought before the Supreme Court of the United States for review. Under these circumstances you will suspend the execution and delivery of a patent, under the decision of this department of the 4th instant, until further advised in the case by the Secretary.

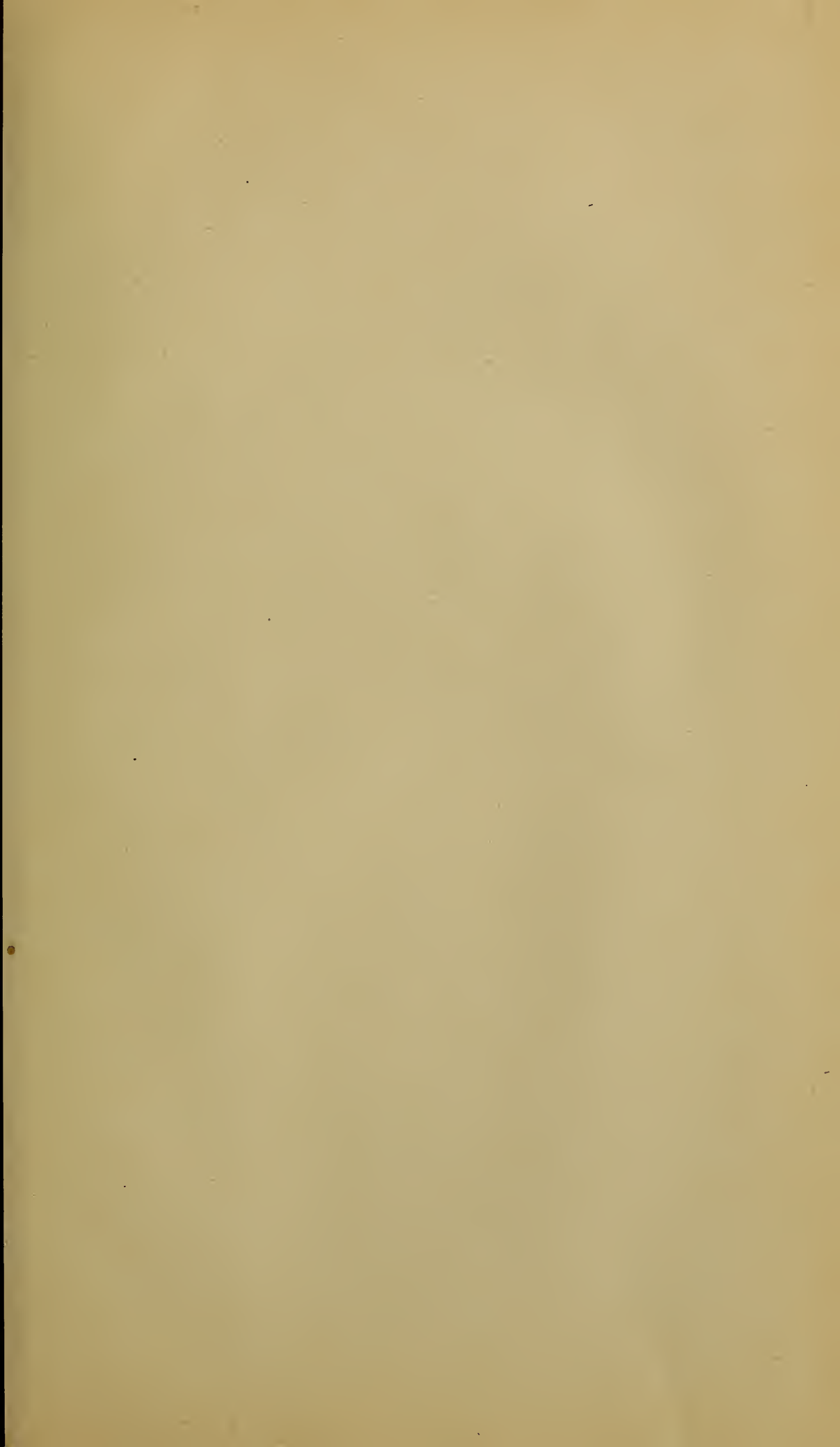
"I am, sir, very respectfully, your obedient servant,

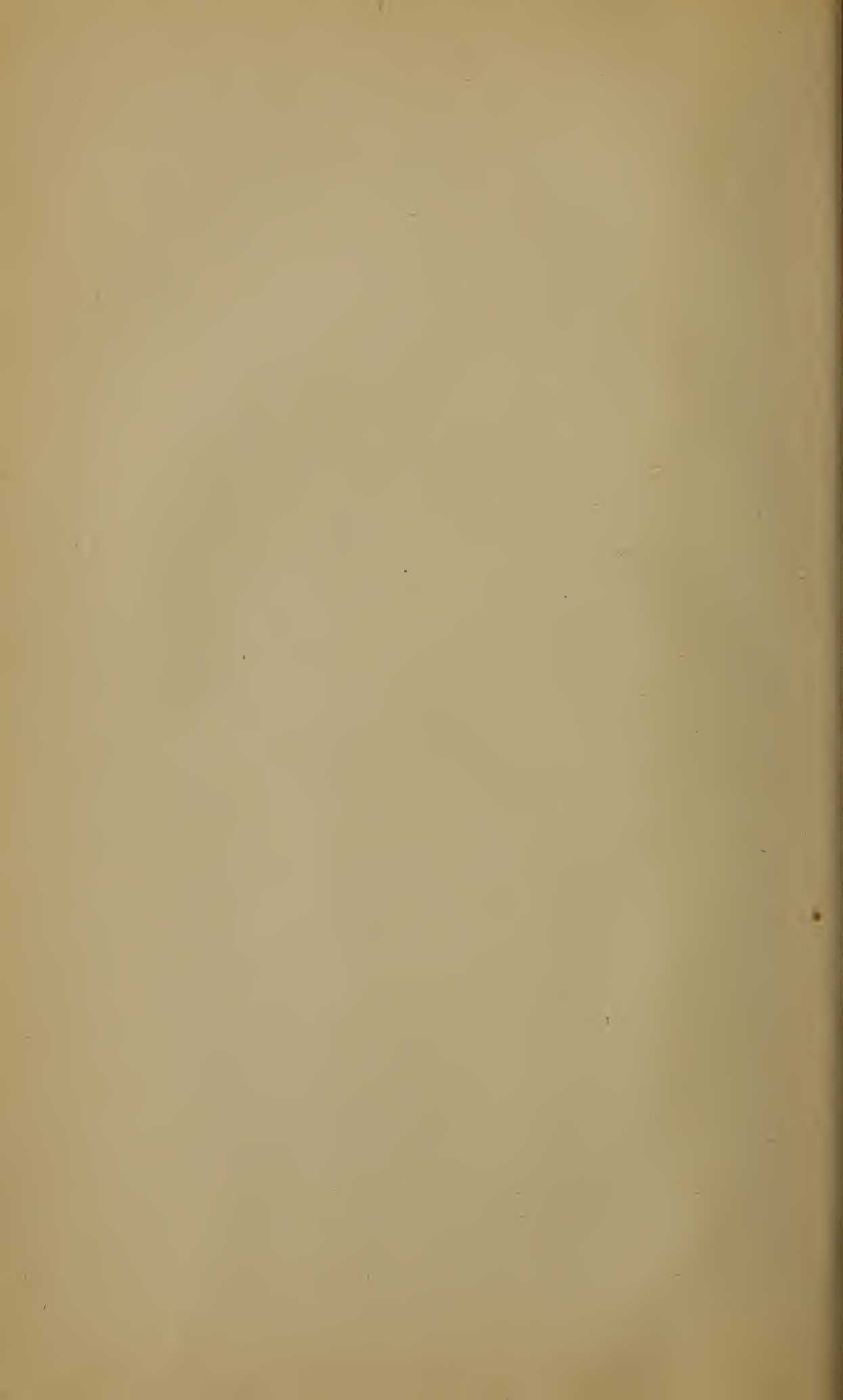
"W. F. OTTO, *Acting Secretary*.

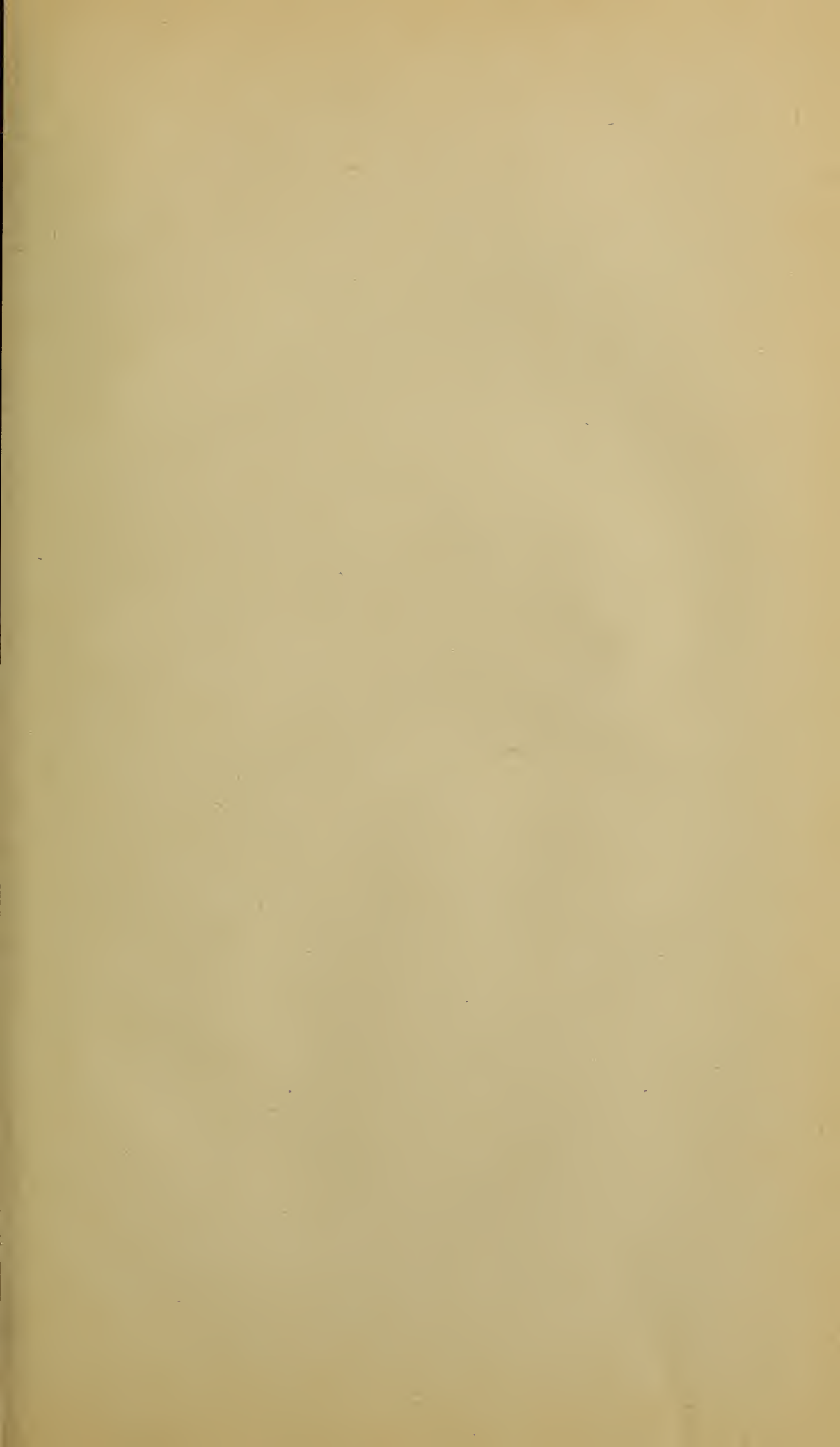
"The COMMISSIONER OF THE GENERAL LAND OFFICE."

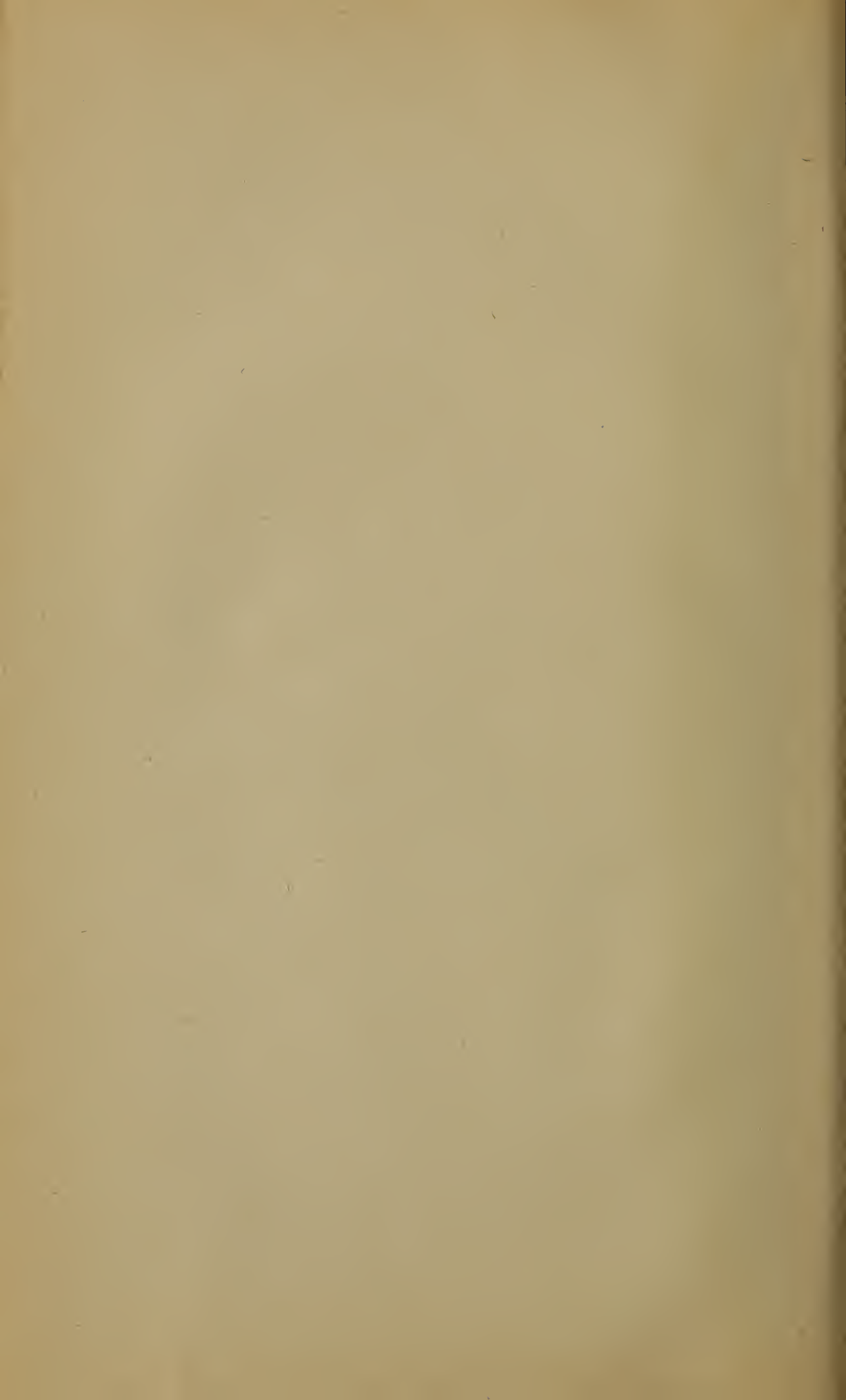
This is only another instance of the effect of time upon the frail memory of man. The committee had evidently, on the 8th day of May, 1868, lost all recollection of the facts detailed in their own report of March 26, 1867.

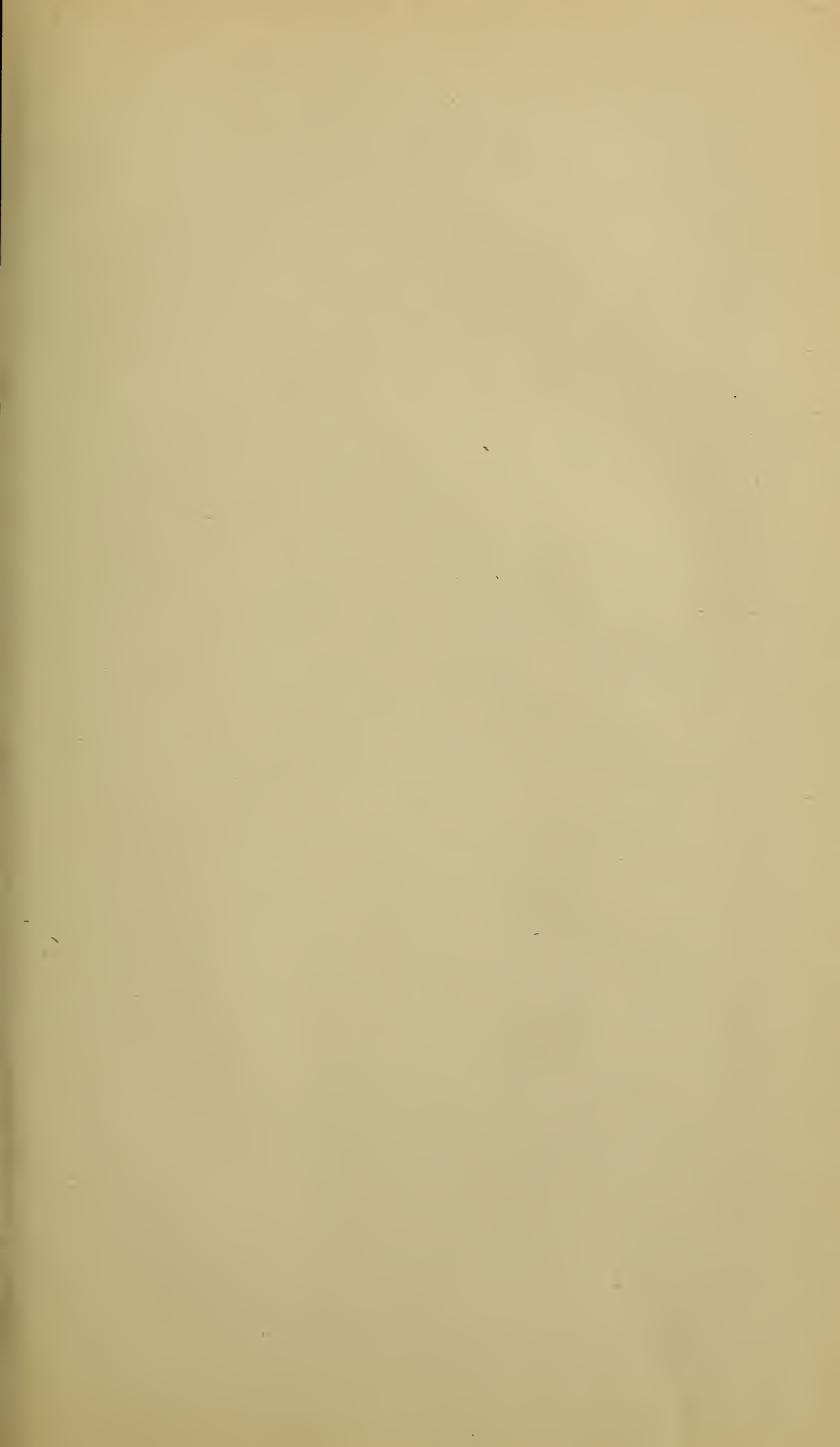






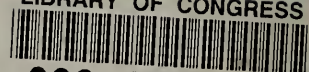








LIBRARY OF CONGRESS



0 029 826 099 2